

O-143-14

TRADE MARKS ACT 1994

**IN THE MATTER OF THE APPLICATION BY
EVERYTHING EVERYWHERE LIMITED
UNDER NO 2624522 FOR THE TRADE MARK**

CLONE PHONE FULLY LOADED

AND

**IN THE MATTER OF OPPOSITION NO. 104271 THERETO
BY SHEBANG TECHNOLOGIES GROUP LIMITED**

THE BACKGROUND AND THE PLEADINGS

1) On 13 June 2012 Everything Everywhere Limited (“the Applicant”) filed application no. 2624522 to register the following mark for goods and services in classes 7, 9, 16, 25, 28, 35, 36, 37, 38, 39, 41 and 42:

CLONE PHONE FULLY LOADED

The application was published in the Trade Marks Journal on 21 September 2012.

2) Shebang Technologies Group Limited (“the Opponent”) opposes the registration of the Applicant’s mark in respect of all the services in classes 37 and 38 and some goods and services in classes 9, 35, 41, and 42. For convenience, the goods and services opposed are shown in **Annex 1** to this decision. The opposition was initially based on grounds under sections 5(2)(b), and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). However, before the hearing the Opponent gave notice to the Applicant and the Tribunal that it withdrew its opposition under section 5(4)(a). Accordingly, the opposition proceeded under section 5(2)(b) alone.

3) For the purposes of its claim under section 5(2)(b) the Opponent relies on UK trade mark registration no. 2525298, filed on 3 September 2009 and registered on 12 February 2010 for the following mark and services:

FULLY LOADED

Class 38: Telecommunication services; mobile phone services; telephone services; information, consultancy and advisory services concerning the foregoing.

4) The above mark constitutes an “earlier trade mark” for the purposes of section 5(2)(b). Its registration process was completed less than five years before the publication date of the opposed application no. 2624522, so the proof of use provisions in section 6A of the Act do not apply.

6) The Applicant filed a counterstatement, denying the grounds of opposition. The Opponent filed evidence. The Applicant filed written submissions. The Opponent requested a hearing, and the matter came to be heard by me on 14 January 2014. At the hearing the Opponent was represented by Mr Christopher Hall of counsel, instructed by Davenport Lyons. The Applicant, through its solicitors Bird & Bird, filed written submissions in lieu of attendance at the hearing.

THE EVIDENCE

The Opponent’s evidence

7) In a witness statement of 10 June 2013 Mr Stuart Harvey states that he is the Head of Web Development of the Opponent. His evidence contains a number of submissions, which I take into account together with those of the Applicant.

8) Mr Harvey states that many modern mobile phones are also handheld computer devices, or “smartphones”, having functions such as text messaging, instant messaging, calling, email, web browsing, still and video cameras, MP3 player and video playback. He attaches as **Exhibit SH1** print-outs of articles from the internet to demonstrate this. One of these was published on 4 December 2012, which I note is after the filing date of the mark in suit, this being 13 June 2012 (“the relevant date”). However, this article confirms the developments described in earlier articles bearing copyright or publication dates from 2004, 2008 and 2009. Mr Harvey describes these developments, and suggests conclusions to be drawn from them, as follows. Many tablet computers now exhibit many features in common with mobile phones and smartphones and there is no longer a clear distinction in the marketplace between mobile phones, smartphones and tablet computers. Since all the above goods and services are inextricably linked, consumers of mobile phone “pay as you go” and “pay monthly” SIM cards to access mobile telecommunications networks are also likely to be consumers of mobile phones, smartphones, tablet computers, and all related accessories, apparatus, equipment and software. Mr Harvey states that SIM cards, mobile phones, mobile phone accessories apparatus, equipment hardware software and computers are often sold in the same sales outlets and through the same distribution channels, often positioned side-by-side in shops and on websites. He attaches at **Exhibit SH2** examples of offers by High Street mobile phone providers where customers can purchase mobile phones and tablets and pay a monthly contract together. These were all downloaded after the relevant date. However, I accept that network access and activation services, together with supporting goods, have been sold together in the high street for some years, and this was the case at the relevant date. Mr Harvey argues that consumers of telecommunication services, mobile phone services and telephone services are of necessity consumers of these products. He states that it is also common for the above-mentioned products and services to be marketed and sold under the same brand, Apple, Samsung, and Sony, for example, all producing smartphones, tablets, computer hardware and software and accessories. As a further example he states that Vodaphone provides a mobile telecommunications network, and sells pay as you go and pay monthly telecommunications services, SIM cards, mobile phones, smartphones, tablet computers and accessories under its brand, and he attaches documents in **Exhibit SH3** to demonstrate this. Again, I note that these were downloaded after the relevant date, but consider that they reflect methods of distribution in use at the relevant date.

9) Mr Harvey cites “Oxford Dictionaries” (though without providing a copy of the entry, or specifying a particular work or edition) as defining a “clone” as a “computer designed to simulate exactly the operation of another, typically more expensive, model”. He cites “Computer World on-line magazine” (though without providing a print-out or date for the relevant item) as the source for the following statement on mobile phone cloning: “cloning enables a phone to make and receive calls that appear to be coming from another phone”. From this Mr Harvey concludes that a “clone phone” is “either an identical copy of another phone and/or all of the data stored on your phone, including your contacts, appointments photographs and videos”. In **Exhibit SH4** he provides various website print-outs, screen prints (including screen prints of You-Tube product demonstration videos) and a transcription of a You-Tube video to support his contention that CLONE PHONE is commonly used in the relevant market and is therefore a descriptive term. Many

were published after the relevant date, but some bear earlier publication dates. The Applicant objects that this evidence originates outside the UK and is therefore not relevant. The Opponent replies that since they are in English, origin is irrelevant, that they can be accessed in the UK and can demonstrate how the average English-speaker understands the term.

Exhibit SH5 comprises documents to show that the Applicant is currently using its CLONE PHONE FULLY LOADED mark in respect of the provision of mobile phone insurance cover. **Exhibit SH6** consists of documents relating to the corporate structure and affiliates of the Applicant, showing various Orange and T-Mobile related companies are “all part of the Applicant company corporate tree”.

10) Mr Harvey makes the following statements:

- The trade mark FULLY LOADED (word) (the ‘Trade Mark’) was first used in or around August 2009, primarily in relation to the Opponent’s telecommunication and mobile phone services in the UK, namely its FULLY LOADED ‘pay as you go’ packages whereby the consumer purchased a mobile telephone handset plus £60 inclusive airtime credit which was delivered over the first six months of connection at £10 per month. This package was offered in conjunction with the Orange network provider, one of the companies associated with the Applicant.
- The handsets sold as part of the Opponent’s Fully Loaded package included Nokia 2330, Samsung EI 120, LandRover SI and Nokia 1208/09 between September 2009 and June 2010. In December 2012 the Opponent launched its own network and the earlier mark has been used on a substantial scale throughout the UK in relation to the registered services and to mobile phones and SIM cards and technical support services. (I note that December 2012 is after the relevant date).
- The Opponent registered the domain name fullyloadedmobile.co.uk on 20 August 2009. A copy of a WHOIS print-out is exhibited at **Exhibit SH7**. Currently there is no website attached to this domain name.

11) Mr Harvey states that the Opponent’s mark has also been used on mobile phone packaging in relation to the Opponent’s mobile phone Fully Loaded ‘pay as you go’ and ‘pay monthly SIM only’ packages and services through its own direct routes to market, including through approximately 100 Go Mobile phone shops in the UK, its primary consumer-facing website at www.affordablemobiles.co.uk (“the Affordable Mobiles Website”) and its websites at www.shebang.net (“the Shebang Website”) and www.gomobile.co.uk (“the Go Mobile Website”). As evidence of this exposure he attaches:

- At **Exhibit SH8**: print-outs from the Go Mobile, Affordable Mobiles Shebang websites. However, all bear copyright notices after the relevant date.
- At **Exhibits SH9**: an example of the Opponent’s Fully Loaded Terms and Conditions, as featured on mobile phone packaging and webpages featuring

the Fully Loaded offers. They are undated, but correspond to those shown in **Exhibit SH10**.

- At **Exhibit SH10**: examples of the Nokia 2330 sleeve design created on 20 October 2009 and the Nokia 1208 sleeve created on 8 October 2009 and updated on 22 October 2009. These are shown in **Annex 2** to this decision. They bear the mark FULLY LOADED, together with logos of the Opponent and Orange and photographs of the phones. In the conditions text the term “Fully Loaded” is always used with the TM symbol; for example: “The first Fully Loaded™ top up is redeemable at point of first activation.....”
- At **Exhibit SH11**: the Opponent’s trade dealer Fully Loaded advert (PDF created 13 Aug 09) and Fully Loaded mail shot (PDF created 21 Aug 09) sent by the Opponent to its own trade dealer base, these being aids for sales staff to send out by request or use for their own relationships/accounts. They are shown in **Annex 3**.
- At **Exhibit SH12**: the Opponent’s dealership consumer price-book for January 2013 and proposed dealership consumer price-book for June 2013 (both being after the relevant date);
- At **Exhibit SH13**: a copy of the Opponent’s Brand Identity Guidelines. These are undated, but Mr Harvey states that they were created on, and have been in use since, 15 October 2009. They deal virtually exclusively with the SHEBANG brand, but the earlier mark is referenced on page 19, where the words FULLY LOADED (with TM symbol) appear within a “stamp device” (“stamp devices” being “supporting logo lock-ups that hold a specific message”). Mr Harvey says these Brand Identity Guidelines have been used internally by the Opponent’s employees in all departments and externally by printers of box sleeves.

12) Mr Harvey defines “Goods and Services” to mean the services for which the earlier mark is registered plus “mobile phones and SIM cards and technical support services”. He gives “annual turnover in relation to the Goods and Services sold by reference to” the earlier mark as follows:

Year	Turnover (£)
September 2009 to December 2009	£141,000
January 2010 to June 2010	£231,000
December 2012	Not yet available
2013	Not yet available

Mr Harvey says that it is the Opponent’s practice to block-book advertising space in external publications for more than one product, this making it difficult to apportion the total figure to any particular individual product or offer. The Opponent’s promotional spend on external publications to promote its products (including “the Goods and Services under the Trade Marks”) from August 2009 to June 2010 was £115,000. By way of an example of how and where the earlier mark has been promoted, Mr Harvey says, advertisements promoting the “Goods and Services under the Trade Mark” have appeared in the following trade publications, print-outs of which are exhibited at **Exhibit SH14**:

Publication	Circulation	Dates
Daventry Express	Unknown	In or around September 2009
Mobile News Magazine (advertisement)	UK	4 September 2009

Mr Harvey states that the Opponent’s FULLY LOADED brand has also been featured and/or advertised in industry-related on-line websites such Mobile News and Mobile Today, relevant text copies, some dating from October and November 2009, being attached at **Exhibit SH15**.

The Applicant’s submissions

13) The Applicant filed submissions both in reply to the Opponent’s evidence and in lieu of attendance at the hearing. The Applicant also made a number of criticisms of the evidence of use and reputation filed by the Opponent. Although the Opponent did not pursue its opposition under section 5(4)(a), this evidence, and the Applicant’s criticisms of it, are also relevant to the issue of enhanced distinctiveness in connection with the Opponent’s claim under section 5(2)(b). I do not summarise these submissions here, but have taken them into account, and will refer to the salient points in the course of my assessment.

SECTION 5(2)(b)

14) Section 5(2)(b) of the Act reads:

5(2) A trade mark shall not be registered if because –

... (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

In reaching my decision I have taken into account the guidance provided by the Court of Justice of the European Union (“CJEU”) in a number of judgments: *Sabel BV v. Puma AG* [1998] R.P.C. 199, *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* [1999] R.P.C. 117 (“*Canon*”), *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen*

Handel B.V [2000] F.S.R. 77, *Marca Mode CV v. Adidas AG + Adidas Benelux BV* [2000] E.T.M.R. 723, *Case C-3/03 Matrazen Concord GmbH v GmbGv Office for Harmonisation in the Internal Market* [2004] ECR I-3657 *Medion AG V Thomson multimedia Sales Germany & Austria GmbH* (Case C-120/04) and *Shaker di L. Laudato & Co. Sas* (C-334/05). In *La Chemise Lacoste SA v Baker Street Clothing Ltd* (O/330/10) Mr Geoffrey Hobbs QC, sitting as the Appointed Person, quoted with approval the following summary of the principles which are established by these cases:

"(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either *per se* or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks causes the public to wrongly believe that the respective goods [or services] come from the same or economically-linked undertakings, there is a likelihood of confusion."

Comparison of the relevant goods and services

15) In making an assessment of the similarity of the goods/services, all relevant factors relating to the goods and services in the respective specifications should be taken into account. In *Canon Kabushiki Kaisha v. Metro- Goldwyn-Mayer* the CJEU stated at paragraph 23 of its judgment:

"In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, *inter alia*, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary."

16) The criteria identified in *British Sugar Plc v James Robertson & Sons Limited* ("*Treat*") [1996] R.P.C. 281 for assessing similarity between goods and services also include an assessment of the channels of trade of the respective goods or services.

17) Whether goods/services are complementary (one of the factors referred to in *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*), will depend on whether there exists a close connection or relationship such that one is important or indispensable for the use of the other. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case T- 325/06* it was stated:

"It is true that goods are complementary if there is a close connection between them, in the *sense that one is indispensable or important for the use of the other in such a way that* customers may think that the responsibility for those goods lies with the same undertaking (see, to that effect, Case T-169/03 *Sergio Rossi v OHIM – Sissi Rossi (SISSI ROSSI)* [2005] ECR II-685, paragraph 60, upheld on appeal in Case C-214/05 *P Rossi v OHIM* [2006] ECR I-7057; Case T-364/05 *Saint-Gobain Pam v OHIM – Propamsa (PAM PLUVIAL)* [2007] ECR II-757, paragraph 94; and Case T-443/05 *El Corte Inglés v OHIM – Bolaños Sabri (PiraÑAM diseño original Juan Bolaños)* [2007] ECR I-0000, paragraph 48)."

I also bear in mind the recent guidance given by Mr Daniel Alexander QC, sitting as the Appointed Person, in case B/L O/255/13 *LOVE*, where he warned against applying too rigid a test with regard to complementarity.

18) When comparing the respective goods/services, if a term clearly falls within the ambit of a term in the competing specification then identical goods/services must be considered to be in play (see *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Case T-133/05*) even if there may be other goods/services within the broader term that are not identical.

In *Avnet Incorporated v Isoact Limited* [1998] F.S.R. 16 Jacob J held that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

Jacob J also said, in *Treat*:

“When it comes to construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of trade. After all a trade mark specification is concerned with use in trade”.

19) Specifications should not be given an unnaturally narrow meaning (as per *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267. In *Thomson Holidays Ltd v Norwegian Cruise Lines Ltd* [2003] RPC 32, although in the context of a non-use issue in an infringement case, the court considered interpretation of specifications:

“In my view that task should be carried out so as to limit the specification so that it reflects the circumstances of the particular trade and the way that the public would perceive the use. The court, when deciding whether there is confusion under section 10(2), adopts the attitude of the average reasonably informed consumer of the products. If the test of infringement is to be applied by the court having adopted the attitude of such a person, then I believe it appropriate that the court should do the same when deciding what is the fair way to describe the use that a proprietor has made of his mark. Thus, the court should inform itself of the nature of trade and then decide how the notional consumer would describe such use”.

20) The opponent filed evidence in relation to respective goods and services of the parties. This sort of evidence can be of assistance to show, for example, how goods and services are supplied in practice, which may in turn have a bearing on consumer perceptions. However, assessing levels of similarity between the parties' goods and services is ultimately a matter for the Tribunal. In making my comparison I have borne in mind the convergence of technologies which has taken place in recent years, whereby different content formats (audio, video, text, pictures) reach consumers via a range of digital networks (the internet, mobile infrastructure, satellite, cable, digital terrestrial) and consumer devices (PC, TV, mobile, smartphone, tablet, etc.). Over recent years many consumers in the UK subscribe to a “bundle” of services from a telecommunications supplier, including TV, broadband and telephone services, as a single service package. TV and radio can be accessed online, and “catchup” TV, including streaming of live broadcasts, can be accessed via smartphones. The internet is commonly accessed via mobile phones. These developments have been taking place for some time now. I am satisfied that they will have been significantly reflected in consumer perceptions at the date of application for the Applicant's mark.

In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch) (“YouView”) Floyd J said at paragraph 28:

25) Mr Alexander submitted that the hearing officer adopted too wide a definition of “*telecommunications services*”. She ought, he submitted, to have limited the term to the core of telecommunications, which are the kind of services that are provided by telecommunication undertakings in conducting their telecommunications remit - telephone data and broadband - and are not services that are essentially broadcasting services. He points out that the Ofcom report has separate sections on “television”, “radio” and “telecoms”.

26) I think that once one has, as one does, a situation in which the same piece of apparatus, be it a smart phone or a computer, which is capable of receiving both telephone calls and television programs, it becomes extremely difficult to maintain the distinction for which Mr Alexander contends. Even supposing he is right and one should construe “telecommunication services” as excluding the reception of television programs, and as being limited to telephony and broadband, it remains the case that an apparatus for receiving one is an apparatus for receiving the other. That, as it seems to me, is enough to show that there is a very close similarity between telecommunication services and apparatus for television and radio reception.

27) Mr Malynicz pointed to the Nice Classification, Ninth Edition. He did so not in order to construe what “telecommunications services” meant in his clients’ specification, recognising that would be impermissible. Instead he drew attention to the explanatory note to show that as a matter of language, telecommunications could include both telephony, data message transmission and radio and television. To that extent, it merely confirms what one can find in a number of dictionaries. So, for example, the New Shorter Oxford Dictionary (1993) says that it means “*Communication over a distance, esp. by cable, telegraph, telephone or broadcasting*”.

28) I have difficulty with the suggestion that telecommunications services should be given a narrow meaning which excludes broadcasting. Mr Malynicz did not seriously challenge the suggestion that in some contexts the term may have a more restricted meaning. The fact remains that, on its face, the expression includes a number of areas, increasingly converging, and that without a clear indication one way or the other, includes all of them.

21) It is settled law that in assessing whether there is a likelihood of confusion I must make my comparison on the basis of notional and fair use over the whole range of services covered by the Applicant’s and (since the earlier mark is not subject to proof of use) the Opponent’s respective specifications. It is the inherent nature of the services of the specification which I have to consider; actual use and business strategy are irrelevant to this notional comparison (see *Devinlec Développement Innovation Leclerc SA v OHIM* Case T- 147/03). I am required to consider the likelihood of confusion “in all the circumstances in which the mark applied for might be used if it were to be registered” (See Case C-533/06, *O2 Holdings v Hutchison 3G UK* at paragraph 66). I will make the comparison with reference to the Applicant’s services. I will go through them term by term (but

grouping them when it is useful and reasonable to do so – see the comments of the Appointed Person in *Separode* BL O-399-10). Since the Opponent's specification is confined to Class 38, it will be convenient to begin my comparison with Class 38.

Class 38

22) The Applicant's *telecommunications services* is identical with the Opponent's *telecommunication services*. In the context of Class 38 the Applicant's *telecommunications* is identical with the Opponent's *telecommunication services*. The Applicant's *communications services* cover the Opponent's *telecommunication services*. The services are therefore identical under the guidance in *Meric*. The following fall within the ambit of, and are therefore identical with, both *telecommunication services* and *mobile phone services*: *mobile telecommunications services*; *mobile telecommunications network services*. *Directory enquiry services* falls within the ambit of, and is therefore identical with, both *telephone services* and *mobile phone services*. Alternatively, there is a high degree of complementarity between *directory enquiry services* and both *telephone services* and *mobile phone services*, such that customers may think that the responsibility for those goods lies with the same undertaking. They are therefore at least highly similar. Bearing in mind the comments of Floyd J in *YouView*, the definition of telecommunication which he cites, and the broad scope of *telecommunication services*, the following are all sub-categories of, and all fall within the ambit of, *telecommunication services*, and are therefore identical: *fixed line telecommunication services*; *electronic mail services*; *electronic message delivery services*; *transmission, delivery and reception of sound, data, images, music and information*; *providing user access to the Internet (service providers)*; *broadcasting and delivery of multimedia content over electronic communications networks*; *broadcasting services, namely uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications networks*; *telecommunication of information (including web pages), computer programs and any other data*; *providing telecommunications connections or links to the Internet or databases*; *provision of broadband telecommunications access*; *broadband services*; *Internet access services*; *email and text messaging services*; *services of a network provider namely rental and handling of access time to data networks and databases, in particular the Internet*; *communications services for accessing a database*; *leasing of access time to a computer database, providing access to computer databases, rental of access time to a computer database*; *operation of a network, being telecommunication services*; *providing wireless telecommunications via electronic communications networks*; *wireless digital messaging, paging services, and electronic mail services, including services that enable a user to send and/or receive messages through a wireless data network*; *telecommunications access services*; *radio and television broadcasting and transmission services*; *leasing of access time to a computer database*.

23) The services listed below are all access services provided through a telecommunications network or as part of a telecommunication or mobile phone service. They are all sub-categories of, and fall within the ambit of, *telecommunication services* and/or *mobile phone services*, and are therefore identical: *chat room services*; *portal services*; *information services provided by means of telecommunication networks relating to telecommunications*; *providing on-*

line bulletin boards for the transmission of messages among computer users concerning entertainment, music, concerts, videos, radio, television, film, news, sports, games and cultural events; electronic transmission of news; providing access to digital music websites; communication services, namely, matching users for the transfer of music, video and audio recordings via communication networks; delivery of digital music by telecommunications; providing user access to software to enable the playing of games on telecommunications apparatus; providing user access to software to enable the playing of games over the Internet or other communications networks; providing user access to software to be run on the Internet, on computer, on mobile phones or other electronic devices.

24) The consumer will need equipment to access mobile and telecommunication services. The equipment and services are sold (or hired) through the same channels, often as part of the same package, and there is a complementary relationship between them, such that the consumer may think responsibility for them lies with the same undertaking. There is a high degree of similarity between the Opponent's *telecommunication services* and *mobile phone services* and the Applicant's *rental and hire of communication apparatus and electronic mail-boxes; hire, leasing or rental of apparatus, instruments, installations or components for use in the provision of the aforementioned services*. Certain items of the Opponent's specification relate to information and advice on various specific telecommunication services of the specification. The provision of such information and advice is part and parcel of the respective services to which they relate and will share their similarity. The following are therefore identical or highly similar to the Opponent's *telecommunication services* and/or *mobile phone services*: *information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services in relation to the aforesaid services provided over a telecommunications network; information, advice and consultancy services relating to all of the aforementioned* .

Class 9

25) There is a high degree of complementarity between the goods listed below and the Opponent's telecommunication services and/or telephone or mobile phone services: the equipment is (or contains within its ambit items which are) indispensable to reception and full use of the service; without the service, the equipment is redundant. Telecommunication, telephone and mobile phone service providers supply the apparatus alongside or with the service (e.g. mobile phone, tablet computer, sim card, etc). There is therefore a two-way complementary relationship and a shared channel of trade. The purpose is the same: to enable reception and full use of the service to take place. The users are the same. There is a high degree of similarity between the Opponent's telecommunication, telephone and mobile phone services and the following goods of the applicant: *peripheral equipment for computers* (which would include, for example, equipment to connect a PC to a telecommunication network); *data cards, smart cards; SIM cards; integrated circuit cards; telephone cards; encoded cards; tablet computers, PDA's (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers, electronic organizers, electronic notepads; subscriber identity module cards whether for use in telecommunications apparatus or otherwise; telecommunications apparatus and*

equipment (which would include, for example, set-top boxes for reception of digital TV); mobile telecommunication apparatus and equipment; telecommunications systems and installations; telecommunications network apparatus; wireless and non-wireless routers; femtocells; drivers software for telecommunications networks and for telecommunications apparatus; telephones, mobile telephones and telephone handsets; adapters for use with telephones; batteries; battery chargers for use with telephones; mobile phone accessories, which covers items like batteries and battery chargers; computer software for the redirection of messages, Internet e-mail, and/or other data to one or more electronic handheld devices from a data store on or associated with a personal computer or a server; computer software for the synchronization of data between a remote station or device and a fixed or remote station or device;

26) Some items which I have found in paragraph 25 to be highly similar with items of the Opponent's specification in Class 38 are included within broader terms of the Applicant's specification, which therefore partake of their high similarity, i.e. *computer hardware and firmware; computer programs; computer software; software to be run on the Internet, on computer, on mobile phones or other electronic devices; software downloadable from the internet; software to enable uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications networks, data processing equipment and computers, apparatus for recording, transmission or reproduction of sound or images; mobile digital electronic devices; and data processing equipment and computers.*

27) There may be some overlap in purpose and user between the items listed below and the Opponent's *telecommunication services* and *mobile phone services*, but they are not indispensable to their reception, there is not the same degree of complementarity as the goods listed at paragraph 25 above, they are of a different nature and they will largely be distributed through different trade channels. For example, at the date of application for the mark in suit "apps" for mobile phones existed across many fields, including games, entertainment, education, travel and lifestyle. They were typically available through online shops operated by handset manufacturers like Samsung and Nokia, and by Google, Apple and Microsoft, rather than from the mobile phone service provider. There is therefore a low degree of similarity between *telecommunication services* and/or *mobile phone services* and the following goods of the Applicant: *memory cards; software to enable the playing of games on telecommunications apparatus; software to enable the playing of games over the Internet or other communications networks; parts and fittings for all the aforesaid goods.*

28) There may be some overlap between users of the Opponent's telecommunication services and mobile phone services and of the following items, but their purpose and use is not the same, channels of trade will be largely different, they are not in competition, nor complementary in such a way that consumers may think that the responsibility for those goods lies with the same undertaking; there is no, or at best very low, similarity between the Opponent's services and the following: *cameras; SD-Cards; image processing apparatus, instruments and equipment; magnetic, digital and optical data carriers and storage media; calculating machines; programmed-data-carrying electronic circuits; recorded media; fonts, typefaces,*

type designs and symbols in the form of recorded data; compact discs; digital versatile discs; MP3 players; mouse mats; global positioning system (GPS) devices; bags and cases specially adapted for holding or carrying portable telephones and telephone equipment and accessories; electronic publications (downloadable); digital music; parts and fittings for all the aforesaid goods.

Class 35

29) On the question of the similarity between goods and retail services connected with those goods, the General Court held in Case T116/06 *Oakley Inc v OHIM* (“Oakley”) that the respective goods and services do not have the same nature, purpose and method of use because goods are fungible whereas services are not (see para 47). Despite this, the Court found (at paragraphs 54-56) that the Board of Appeal was correct to find that there were similarities, given the complementary nature of the goods and associated retail services. That is to say that the goods are indispensable to, or at the very least important for, the provision of the retail services. However, the court’s finding of overall similarity related to retail services associated with goods which are “*identical, or closely connected to*” the goods of the other mark. I must bear in mind that the Opponent is protected for *telecommunications services* and *mobile phone services*, and not for the *goods* of the Applicant’s specification in Class 35. The service of retail of these goods is at two removes from the Opponent’s services, and thus arguably too remote to give rise to anything more than average similarity.

30) However, certain goods, such as mobile phones, tablet computers and sim cards, are customarily retailed by providers of telecommunication and mobile phone services alongside, and as integral parts of, their network access services. The service of retailing of these goods shares the same purpose and users, channels of trade largely overlap, and either they are complementary to the Opponent’s telecommunication and/or mobile phone services such that consumers may think that responsibility for them lies with the same undertaking, or they include within their ambit items which are complementary in this way. The retailing of the following goods is therefore highly similar to the Opponent’s *telecommunication services* and/or *mobile phone services*: *peripheral equipment for computers* (which would include, for example, equipment to connect a PC to a telecommunication network); *data cards, smart cards; SIM cards; integrated circuit cards; telephone cards; encoded cards; computer hardware* (which would include, for example, laptop and tablet computers) *and firmware; data processing equipment and computers; laptop computers, electronic organizers, electronic notepads; subscriber identity module cards whether for use in telecommunications apparatus or otherwise; telecommunications apparatus and equipment* (which would include, for example, set-top boxes for reception of digital TV); *mobile telecommunication apparatus and equipment; telecommunications systems and installations; telecommunications network apparatus; wireless and non-wireless routers; femtocells; drivers software for telecommunications networks and for telecommunications apparatus, telephones, mobile telephones and telephone handsets ; computer software for the redirection of messages, Internet e-mail, and/or other data to one or more electronic handheld devices from a data store on or associated with a personal computer or a server; computer software for the synchronization of data between a remote station or device and a fixed or remote station or device; tablet computers, PDAs (Personal*

Digital Assistants), pocket PCs, mobile telephones, adapters for use with telephones; batteries; battery chargers for use with telephones; mobile phone accessories which covers items like batteries and battery chargers.

31. These would also be included in the services for the retailing of the broader terms *apparatus for recording, transmission or reproduction of sound or images; mobile digital electronic devices; telephone equipment; computer hardware and firmware; computer programs; computer software; software to be run on the Internet, on computer, on mobile phones or other electronic devices; software downloadable from the internet; software to enable uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications networks.*

32) There may be some overlap in purpose and user between the items listed below and the Opponent's *telecommunication services and mobile phone services*, but they are not indispensable to the latter's reception, there is not the same degree of complementarity, they are of a different nature and, as explained in paragraph 27, they will largely be distributed through different trade channels. There is at best a low degree of similarity between *telecommunication services and/or mobile phone services* and the retailing of the following goods of the Applicant: *memory cards; software to enable the playing of games on telecommunications apparatus; software to enable the playing of games over the Internet or other communications networks.* The same applies in respect of *parts and fittings for all the aforesaid goods.*

33) There may be some overlap between users of the Opponent's *telecommunication services and mobile phone services* and of the following items, but their purpose and use is not the same, channels of trade will be largely different, they are not in competition, nor complementary in such a way that consumers may think that the responsibility for those goods lies with the same undertaking; there is no, or at best very low, similarity between the Opponent's services and the retailing of the following: *apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, cameras; SD-Cards; image processing apparatus, instruments and equipment; magnetic, digital and optical data carriers and storage media; recording discs; calculating machines; programmed-data-carrying electronic circuits; recorded media; fonts, typefaces, type designs and symbols in the form of recorded data; MP3 players; mouse mats; global positioning system (GPS) devices; bags and cases specially adapted for holding or carrying portable telephones and telephone equipment and accessories; computer games equipment adapted for use within external display screen or monitor, electronic publications (downloadable); digital music.* The same applies in respect of *parts and fittings for all the aforesaid goods, information and advisory services relating to the aforesaid services provided on line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.*

Class 37

34) There is a high degree of complementarity between the Opponent's *telecommunication services and telephone services* and the Applicant's *installation, maintenance and repair of telecommunications installations, communications*

networks, computer networks and data networks; installation, maintenance and repair of telecommunications apparatus and equipment. The installation, repair and maintenance of the necessary plant, apparatus and equipment is indispensable or important for the provision of the Opponent's services, such that consumers may think that responsibility lies with the same undertaking. Without such installation, maintenance and repair, which will in most cases be supplied by the telecommunication services provider, the Opponent's services cannot be provided. Purpose and user are the same. There is a high degree of similarity with the Opponent's services. This also applies with regard to the following services which consumers and potential consumers will require for the purposes of receiving such installation, repair and maintenance: *information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services in relation to the aforesaid services provided over a telecommunications network.* There is a high degree of similarity between the Opponent's services and all the services of the Applicant's specification in Class 37.

Class 41

35) The Opponent's services listed in this class consist of various entertainment, sporting and cultural services provided by means of telecommunication networks. There may be some overlap between users and purpose of these services, in that both serve the object of delivering entertainment, information etc. to the consumer, but they are not in competition with each other. Telecommunications are one means through which a virtually limitless range of services and activities can be provided, but this does not necessarily make telecommunication or mobile phone services complementary to the service ultimately provided. Although many entertainment, sporting or cultural services are today provided via telecommunication or mobile phone networks, they are not complementary in the sense that the average consumer will consider that responsibility for, for example, *entertainment services provided by means of telecommunication networks* or *information services relating to education, training, entertainment, sporting and cultural activities provided by means of telecommunication networks*, lies with the telecommunication or mobile phone service provider. None of the Opponent's other services in this class provide any better case; there is not more than a low degree of similarity with any of them.

Class 42

36) At the time of application for the mark in suit the average consumer would have regarded the following services as typically provided by application service providers rather than telecommunication or telephone service providers: *computer services, namely, creating virtual communities for registered users to organize groups and events, participate in discussions, and engage in social, business and community networking; computer services, namely, hosting electronic facilities for others for organizing and conducting meetings, events and interactive discussions via communication networks; application service provider (ASP) services, namely, hosting computer software applications of others; application service provider (ASP) featuring software to enable or facilitate the uploading, downloading, streaming, posting, displaying, blogging, linking, sharing or otherwise providing electronic media or information over communication networks; providing temporary use of non-*

downloadable software applications for social networking, creating a virtual community, and transmission of audio, video, photographic images, text, graphics and data; computer services in the nature of customized web pages featuring user-defined or specified information, personal profiles, audio, video, photographic images, text, graphics and data; providing a web site featuring technology that enables online users to create personal profiles featuring social networking information and to transfer and share such information among multiple websites. These services share with telecommunication services both users and the purpose of facilitating communication between individuals. Telecommunication networks are indispensable for the provision of these services, but not in such a way that the average consumer may think responsibility lies with the same undertaking; s/he will see them as being typically supplied by different providers. There is not more than a medium degree of similarity with the Opponent's services.

37) *Technical support services* covers helpdesk services, which are customarily offered to customers by providers of telecommunication services and mobile phone services as part of their services. There is a high degree of complementarity and high similarity between *technical support services* and *telecommunication services* and *mobile phone services*. There may be some overlap between the users of the Opponent's services and the following services, but purpose, use and channels of trade will be different. Telecommunication networks may be indispensable for the delivery of some of these services, but not so that consumers will think responsibility lies with the same undertaking. There is not more than a low degree of similarity at best between the Opponent's services and any of the following: *design and development of computer hardware and software; computer services; computer programming services; installation, maintenance, updating, design and repair of computer software and computer programs; creating, operating and maintaining databases, Intranets and websites; hosting the web sites of others; information, advice and consultancy services relating to all of the aforementioned; conversion of data or documents from physical to electronic media; research in the field of telecommunication technology; monitoring of network systems in the field of telecommunications; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services in relation to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services in relation to the aforesaid services provided over a telecommunications network.*

The average consumer and the purchasing process

38) According to the case-law, the average consumer is reasonably observant and circumspect (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27). The degree of care and attention the average consumer uses when selecting goods can, however, vary depending on what is involved (see, for example, the judgment of the GC in *Inter-Ikea Systems BV v OHIM* (Case T-112/06)). Where telecommunications and telephone products and services are bought by the general public, the consumer is likely to be at least reasonably attentive and observant where principal items of equipment and service are concerned, given the cost involved and the need to take a view on what features and functionality is required. On the other hand, purchases of many of the goods are likely to be made on an occasional rather than a regular basis, so imperfect recollection may play a role. Many of the goods

and services concerned (e.g. provision of broadband and telecommunications access, internet access services) will be provided both to the general public and to professional users. Many (radio and television broadcasting, delivery of digital music by telecommunications) will be aimed principally at the general public. Some of the Applicant's goods and services (e.g. mobile telephones) may be used both by the general public and professional users, some (e.g. software to enable the playing of games on telecommunications apparatus) are aimed mainly at the general public and some (e.g. research in the field of telecommunication technology) at professional consumers. Generally speaking, professional consumers will tend to pay more attention than the general public where goods and services purchased are important for their businesses. However, overall, the level of attention will be neither higher nor lower than the normal level of attention of the average consumer, who is deemed to be reasonably observant and circumspect¹, but whose level of attention varies according to the category of goods and services². Visual considerations will be important when purchases are made online and (through catalogues, displays, etc) also when purchases are made in stores. Most purchases will be made through these channels. However, aural considerations can also play a role where purchases are made in stores or by telephone, and will not be ignored in my assessment.

The distinctiveness of the earlier mark

39) The degree of distinctiveness of the earlier marks must be assessed. This is because the more distinctive the earlier mark (on the basis either of inherent qualities or because of use made), the greater the likelihood of confusion (see *Sabel BV v. Puma AG*, paragraph 24). The distinctive character of a trade mark must be assessed by reference to the goods or services in respect of which registration is sought and by reference to the way it is perceived by the relevant public (see *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91).

40) The Applicant submits that the words FULLY LOADED are descriptive, laudatory words having a very low level of distinctiveness, and that their use by the Opponent in combination with various mobile phone brands and networks makes it impossible for consumers to associate the earlier mark with the Opponent. The Applicant also submits that the term FULLY LOADED is extensively used by third parties, but does not explain this any further, or provide evidence of such use, or that the words FULLY LOADED would at the date of application for the mark in suit have been perceived as descriptive by the average consumer of the goods and services at issue in these proceedings.

41) Mobile phones need a certain level of functionality, requiring the installation of applications or "apps", and data storage capacity to enable the downloading and updating of apps. Nowadays – and this was the case at the relevant date – consumers will as a rule demand a high level of functionality. This has led to the development of "smartphones" which can handle a wide choice of applications, such as games, communication or social media apps, digital maps, etc., and have appropriate levels of data storage. In addition, mobile phones will normally have to

¹ See *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V*

² See *Inter-Ikea Systems BV v OHIM*

be “charged up” with credit before they can be used. The term “fully loaded” readily lends itself to use in descriptive contexts. I think it is apt to evoke in the mind of the consumer the idea that the product in question is already equipped with whatever is needed for the product to be used in the way that he or she is likely to want to use it. In the case of mobile phones, for example, I think it suggests that the amount of data capacity installed is sufficient to give a high level of functionality and/or that airtime credit is generous and/or that use time already credited will enable it to be used immediately. This descriptive quality finds confirmation in the excerpts from the Opponent’s websites in **Exhibit SH8**, giving details of the Opponent’s various mobile phone package deals. These comprise varying combinations of contract length, mobile time credits, data capacity, texts, and landline calls. Packages which include unlimited landline calls bear the designation “Landline Loaded” with a number indicating mobile credit minutes (“Landline Loaded 600” “Landline Loaded 900”, etc.). The same scheme is used for packages which include what appears to be the top data capacity offer of 5GB (“Data Loaded 600”, “Data Loaded 900”). Packages which include both the 5GB data capacity and unlimited landline calls are designated “Fully Loaded” (“Fully Loaded 600”, “Fully Loaded 900”, etc.). At the hearing Mr Hall submitted that this showed the Opponent developing a theme through its various packages, but one which was meaningful only in the context of its services under the trade mark; it would not be immediately obvious what “This is my telephone service fully loaded” meant. I accept that the use shown is not inconsistent with trade mark use, but consider that it demonstrates the inherent capacity of the term “fully loaded” to mean “fully loaded with credit//data capacity”, and thus indicates a descriptive quality. Computers are increasingly providing communication functionality using wireless technology for internet connection, and mobile phones can now provide a wide range of functionality, so I consider that this quality of descriptiveness could extend to goods and services in the fields of telecommunications and computers generally. However, the mark is registered and *prima facie* valid³. It is therefore to be treated as having at least a minimum level of distinctive character⁴. Because of its descriptive quality, I think the distinctive character of the earlier mark when used in relation to these goods and services is low.

42) The Opponent submits that the distinctiveness of the earlier mark has been enhanced through use. Because no figure has been specifically apportioned to advertising expenditure promoting the goods and services sold under the earlier mark, the figures given by Mr Harvey, and the evidence provided in **Exhibit SH14**, are of limited value. The Applicant submitted that there was no evidence to support Mr Harvey’s statement that the earlier mark was first used around August 2009. However, no evidence in reply has been filed to challenge this evidence, nor has the Opponent applied to cross-examine Mr Harvey. I have no reason to doubt Mr Harvey’s credibility. I accept that the earlier mark was first used around August 2009 in connection with the Opponent’s FULLY LOADED pay-as-you-go package, as described in paragraph 10. I accept the turnover figures given by Mr Harvey.

43) I see that on phone packaging and promotional material the words FULLY LOADED have been presented in various ways, and jointly affixed with other marks. Nevertheless, the words are prominent and clear, and I do not consider that use as

³ See section 72 of the Act

⁴ See by analogy *Formula One Licensing v OHIM*, Case C-196/11P

shown in **Annexes 2 and 3** to this decision alters the distinctive character of the mark as registered. I consider that the words as presented on these items will be perceived by end consumers and dealers as a trade mark, albeit as a sub-brand of the Opponent. I accept that the mark was used in this way in relation to the Opponent's FULLY LOADED package between August 2009 and June 2010.

44) Evidence of use of the mark from December 2012 is not relevant in these proceedings. The only period for which I have evidence of use of the mark before the relevant date is August 2009 to June 2010. I accept that during that period the turnover in relation to the goods and services sold by reference to the trade mark amounted to a little over £372,000. Though these figures are not insignificant, it is difficult to judge their impact in what must be a massive UK market for mobile phone services without evidence of market share. In the light of all these considerations I am unable to conclude that the Opponent's earlier mark in these proceedings would have been known to a significant proportion of consumers for mobile phone services in the UK at the relevant date. I therefore find that the Opponent has not shown that the earlier mark had acquired a materially enhanced level of distinctiveness in the UK as a result of the use of the marks before the date of application for the mark in suit.

Comparison of the marks

45) The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The visual, aural and conceptual similarities of the marks must be assessed by reference to their overall impressions, bearing in mind their distinctive and dominant components. The marks to be compared are shown below.

The Opponent's Mark	The Applicant's Mark
FULLY LOADED	CLONE PHONE FULLY LOADED

46) Neither of the two words in the Opponent's mark is dominant, or more distinctive than the other. FULLY qualifies LOADED to create a complete phrase which hangs together.

47) In assessing the Applicant's mark I bear in mind that I must make a whole-mark comparison. I think the phrase FULLY LOADED qualifies CLONE PHONE to form a whole phrase, which imposes some unity on the mark. Nevertheless, it is a long and rather unwieldy mark. The catchy, jingle-like quality of the initial rhyming couplet CLONE PHONE contrasts with the unrhymed bisyllabic words which follow, which also have a different rhythm. The consumer will see the phrase which constitutes the whole mark as being itself composed naturally of two phrases. I think this is reinforced by the reversal of the usual English word order, whereby a

qualifying phrase is normally placed before the element qualified. I therefore find that FULLY LOADED has an independent role in the applicant's mark.

48. I do not consider the evidence provided by the Opponent in **Exhibit SH4** enables me to conclude with confidence that the average UK consumer will specifically attribute any of the meanings discussed there to the phrase CLONE PHONE. However, I do accept that in the perception of the average consumer the word CLONE is likely to be understood as indicating an exact copy of something. A "clone phone" is an exact copy of a phone. It could refer to a "back-up" phone made to replicate a particular mobile phone. Especially in the fields of telecommunication and computer products, the consumer is used to the idea of competitors producing "me too" products, including cheaper versions of successful well-known brands. They are also aware of the existence of cheap counterfeit products. In this connection I consider that CLONE PHONE would be suggestive to the average consumer (perhaps with slightly rakish overtones) of such an inexpensive phone. CLONE PHONE's descriptive quality would be at its highest in connection with telephones and telephone services but, in view of the convergence of telecommunication and computer technology and services noted above, I think some of this descriptive quality would also attach broadly to these fields. Neither CLONE PHONE nor FULLY LOADED is very distinctive, and CLONE PHONE is not markedly dominant in the Applicant's mark; FULLY LOADED is far from negligible in the Applicant's mark, both elements contributing to the distinctive character of the mark as a whole.

49) The Applicant's mark consists of four words, and the Opponent's of two. The first two words of the Applicant's mark are completely different from the Opponent's. However, the Opponent's entire mark is incorporated into the Applicant's, forming its second half. These considerations apply to both the visual and aural properties of the mark. I bear in mind the rule of thumb whereby consumers generally take more note of a mark's beginning than its end⁵, but also that this does not, in any event, cast doubt on the principle that the assessment of the similarity of marks must take account of the overall impression created by them⁶. Viewed as a whole, there is a reasonable degree of visual and aural similarity between the marks.

50) I have already examined the conceptual content, and descriptive quality, of the phrases CLONE PHONE and FULLY LOADED. CLONE PHONE provides conceptual content for the Applicant's mark alone, thereby differentiating it from the Opponent's mark. FULLY LOADED qualifies CLONE PHONE in the Applicant's mark, but the concept FULLY LOADED is common to both marks, and will not be overlooked in the Applicant's mark. Overall, there is a reasonable degree of conceptual similarity between the marks.

Likelihood of confusion

51) The factors assessed so far have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17), a global assessment

⁵See *L'Oreal v OHIM* Case C-655/11P.

⁶ See *Spa Monopole, compagnie fermière de Spa SA/NV v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM) Case T- 438/07

of them must be made when determining whether there exists a likelihood of confusion (*Sabel BV v. Puma AG*, paragraph 22). However, there is no scientific formula to apply. It is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused. In *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* C-120/04 the CJEU found that:

“...Article 5(1)(b) of the directive is to be interpreted as meaning that where the goods or services are identical there may be a likelihood of confusion on the part of the public where the contested sign is composed by juxtaposing the company name of another party and a registered mark which has normal distinctiveness and which, without alone determining the overall impression conveyed by the composite sign, still has an independent distinctive role therein.”

The requirement to consider the impact of all the component parts of a complex mark, even if they do not dominate that mark, is reflected in the Courts later case law; in *Shaker di L. Laudato & C. Sas v OHIM* it ruled that:

“...it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements.”

Unlike the position in the *Medion* case, the earlier mark in this case – FULLY LOADED – has a below normal level of distinctive character, and some of the goods and services at issue are not identical to the goods for which the earlier mark is entitled to protection. However, neither of these points excludes a finding that there is a likelihood of confusion, because that would amount to overlooking the impact that the words FULLY LOADED might have on the public as part of the Applicants’ mark in circumstances where those words are clearly not a negligible component of that mark. I will therefore take account of the judgment in *Medion*, but make my decision, as I am required to do, on the basis of all the relevant factors.

52) I do not consider that there is a likelihood that the Applicant’s mark will be directly confused with the Opponent’s mark. However, despite the low distinctiveness of the Opponent’s mark, I think that when the Applicant’s mark is used in connection with goods or services which I have found to be identical or highly similar with those of the Opponent, there is a likelihood that the relevant public will associate that mark with the Opponent’s FULLY LOADED mark, and believe that the respective marks are used by the same undertaking, or by economically linked undertakings. I therefore find that there is a likelihood of confusion in respect of those goods or services of the Applicant which I have found to be identical or highly similar with those of the Opponent. Where goods or services are of less than high similarity, I find that the distinctive character of FULLY LOADED is not sufficient for the inclusion of those words in the Applicant’s mark to be seen as more than a coincidence. Accordingly, I find no likelihood of confusion in respect of those goods or services of the Applicant which I have found to be of less than high similarity with those of the Opponent.

53) In making this finding I have not overlooked the Applicant's submission that, despite having filed evidence that the earlier mark had co-existed on the market with the mark in suit (for at least 12 months in the Applicant's submission), the Opponent had not filed any evidence of actual confusion. In this connection I bear in mind the comments of Ms Anna Carboni, sitting as the Appointed Person in *Ion Associates v Philip Stainton & Another* (O-211-09 at paragraph 52), in which she said:

“For honest concurrent use to be of assistance to an applicant, it must be possible for the tribunal to be satisfied that the effect of the concurrent trading is such as to suggest that the relevant public has shown itself able to distinguish between goods bearing the marks in question without any confusion as to trade origin. That implies that both parties are targeting an approximately similar, or at least overlapping, audience and that the use by the parties in nature, extent and duration of trade has been sufficient to satisfy the tribunal that any apparent capacity for confusion has been adequately tested and found not to exist”.

54) I do not consider that the evidence shows that the capacity for confusion has been adequately tested and found not to exist. My finding regarding the likelihood of confusion therefore remains undisturbed.

THE OUTCOME

55) I have found a likelihood of confusion, and the opposition succeeds, in respect of the following opposed goods and services of the Applicant's registration, which therefore cannot proceed to registration:

Class 9

Apparatus for recording, transmission or reproduction of sound or images; data processing equipment and computers; peripheral equipment for computers; data cards; smart cards; SIM cards; integrated circuit cards; telephone cards; encoded cards; computer hardware and firmware; computer programs; computer software; software to enable uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications networks; software to be run on the Internet, on computer, on mobile phones or other electronic devices; software downloadable from the Internet; computer software for the redirection of messages, Internet e-mail, and/or other data to one or more electronic handheld devices from a data store on or associated with a personal computer or a server; computer software for the synchronization of data between a remote station or device and a fixed or remote station or device; tablet computers, PDA's (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers, electronic organizers, electronic notepads; subscriber identity module cards whether for use in telecommunications apparatus or otherwise; telecommunications apparatus and equipment; mobile telecommunication apparatus and equipment; telecommunications systems and installations; telecommunications network apparatus; wireless and non-wireless routers; femtocells; drivers software for telecommunications networks and for telecommunications apparatus; telephones, mobile telephones and telephone handsets; mobile digital electronic devices;

adapters for use with telephones; batteries; battery chargers for use with telephones; mobile phone accessories.

Class 35

Retail services and on-line retail services connected with the sale of apparatus for recording, transmission or reproduction of sound or images, data processing equipment and computers, peripheral equipment for computers, data cards, smart cards, SIM cards, integrated circuit cards, telephone cards, encoded cards, computer hardware and firmware, computer programs, computer software, software to enable uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications networks, software to be run on the Internet, on computer, on mobile phones or other electronic devices, software downloadable from the Internet, computer software for the redirection of messages, Internet e-mail, and/or other data to one or more electronic handheld devices from a data store on or associated with a personal computer or a server, computer software for the synchronization of data between a remote station or device and a fixed or remote station or device, tablet computers, PDA's (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers, electronic organizers, electronic notepads, subscriber identity module cards whether for use in telecommunications apparatus or otherwise, telecommunications apparatus and equipment, mobile telecommunication apparatus and equipment, telecommunications systems and installations, telecommunications network apparatus, wireless and non-wireless routers, femtocells, drivers software for telecommunications networks and for telecommunications apparatus, telephones, mobile telephones and telephone handsets, mobile digital electronic devices; adapters for use with telephones, batteries, battery chargers for use with telephones, mobile phone accessories,

Class 37

Installation, maintenance and repair of telecommunications installations, communications networks, computer networks and data networks; installation, maintenance and repair of telecommunications apparatus and equipment; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services in relation to the aforesaid services provided over a telecommunications network.

Class 38

Telecommunications; telecommunications services; communications services; mobile telecommunications services; mobile telecommunications network services; fixed line telecommunication services; chat room services; portal services; electronic mail services; electronic message delivery services; transmission, delivery and reception of sound, data, images, music and information; directory enquiry services; providing user access to the Internet (service providers); broadcasting and delivery of multimedia content over electronic communications networks; broadcasting services, namely uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other

communications networks; providing user access to software to enable the playing of games on telecommunications apparatus; providing user access to software to enable the playing of games over the Internet or other communications networks; providing user access to software to be run on the Internet, on computer, on mobile phones or other electronic devices; telecommunication of information (including web pages), computer programs and any other data; providing telecommunications connections or links to the Internet or databases; provision of broadband telecommunications access; broadband services; Internet access services; email and text messaging services; information services provided by means of telecommunication networks relating to telecommunications; services of a network provider namely rental and handling of access time to data networks and databases, in particular the Internet; communications services for accessing a database; leasing of access time to a computer database, providing access to computer databases, rental of access time to a computer database; operation of a network, being telecommunication services; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services in relation to the aforesaid services provided over a telecommunications network; providing wireless telecommunications via electronic communications networks; wireless digital messaging, paging services, and electronic mail services, including services that enable a user to send and/or receive messages through a wireless data network; providing access to digital music websites; delivery of digital music by telecommunications; telecommunications access services; communication services, namely, matching users for the transfer of music, video and audio recordings via communication networks; providing on line bulletin boards for the transmission of messages among computer users concerning entertainment, music, concerts, videos, radio, television, film, news, sports, games and cultural events; rental and hire of communication apparatus and electronic mail-boxes; electronic transmission of news; radio and television broadcasting and transmission services; hire, leasing or rental of apparatus, instruments, installations or components for use in the provision of the aforementioned services; information, advice and consultancy services relating to all of the aforementioned; leasing of access time to a computer database.

Class 42

Technical support services.

56) The opposition fails in respect of the following remaining opposed goods and services, which can therefore proceed to registration.

Class 9

Magnetic, digital and optical data carriers and storage media; calculating machines, programmed-data-carrying electronic circuits; recorded media; memory cards; software to enable the playing of games on telecommunications apparatus; software to enable the playing of games over the Internet or other communications networks; fonts, typefaces, type designs and symbols in the form of recorded data; SD-Cards; compact discs; digital music; digital versatile discs; MP3 players; bags and cases

specially adapted for holding or carrying portable telephones and telephone equipment and accessories; cameras; image processing apparatus, instruments and equipment; electronic publications (downloadable); mouse mats; global positioning system (GPS) devices; parts and fittings for all the aforesaid goods.

Class 35

Retail services and on-line retail services connected with the sale of apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, magnetic, digital and optical data carriers and storage media, recording discs, calculating machines, programmed-data-carrying electronic circuits, recorded media, memory cards, software to enable the playing of games on telecommunications apparatus, software to enable the playing of games over the Internet or other communications networks, fonts, typefaces, type designs and symbols in the form of recorded data, SD-Cards, digital music, MP3 players, global positioning system (GPS) devices, bags and cases specially adapted for holding or carrying portable telephones and telephone equipment and accessories, computer games equipment adapted for use with an external display screen or monitor, cameras, image processing apparatus, instruments and equipment, electronic publications (downloadable), mouse mats, parts and fittings for all the aforesaid goods, information and advisory services relating to the aforesaid services provided on line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 41

Interactive entertainment services; electronic games services provided by means of any communications network; entertainment services provided by means of telecommunication networks; information services relating to education, training, entertainment, sporting and cultural activities provided by means of telecommunication networks; provision of news information; provision of entertainment by means of television and Internet protocol television; television provision services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.

Class 42

Design and development of computer hardware and software; computer services; computer services, namely, creating virtual communities for registered users to organize groups and events, participate in discussions, and engage in social, business and community networking; computer services, namely, hosting electronic facilities for others for organizing and conducting meetings, events and interactive discussions via communication networks; application service provider (ASP) services, namely, hosting computer software applications of others; application service provider (ASP) featuring software to enable or facilitate the uploading, downloading, streaming, posting, displaying, blogging, linking, sharing or otherwise providing electronic media or information over communication networks; providing temporary use of non-downloadable software applications for social networking,

creating a virtual community, and transmission of audio, video, photographic images, text, graphics and data; computer services in the nature of customized web pages featuring user-defined or specified information, personal profiles, audio, video, photographic images, text, graphics and data; providing a web site featuring technology that enables online users to create personal profiles featuring social networking information and to transfer and share such information among multiple websites; computer programming services; installation, maintenance, updating, design and repair of computer software and computer programs; recovery of computer data; rental of computer; rental of computer software; rental of computer hardware; creating, operating and maintaining databases, Intranets and websites; hosting the web sites of others; information, advice and consultancy services relating to all of the aforementioned; conversion of data or documents from physical to electronic media; research in the field of telecommunication technology; monitoring of network systems in the field of telecommunications; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services in relation to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services in relation to the aforesaid services provided over a telecommunications network.

COSTS

57) In its written submissions the Applicant observed that the opposition on the basis of section 5(4)(a) was dropped only two days before the deadline to file submissions. It stated that it was because of this late notice that the Applicant's submissions contained an analysis and review of the Opponent's evidence in support of its claim under section 5(4)(a), which had been prepared prior to the Opponent's notification. The Applicant requested that this be taken into account when I made my costs award. However, the focus of the evidence in question was to establish goodwill by evidence of use and reputation, and that evidence of use and reputation is equally applicable to the 5(2)(b) opposition; indeed, I have taken it – and the Applicant's submissions on it – into account in my deliberations on the question of enhanced distinctiveness under section 5(2)(b).

58) Shebang Technologies Group Limited been substantially successful and is entitled to a contribution towards its costs. I hereby order Everything Everywhere Limited to pay Shebang Technologies Limited the sum of £2,200. This sum is calculated as follows:

<i>Preparing a statement and considering the other side's statement</i>	£ 300
<i>Preparing evidence</i>	£ 1,000
<i>Preparing for and attending a hearing</i>	£ 700
<i>Opposition fee</i>	£ 200

59) The above sum should be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 2nd day of April 2014

**Martin Boyle
For the Registrar,
The Comptroller-General**

Annex 1

Schedule - Opposed Goods and Services

Class	Applicant's Goods
9	<p>Apparatus for recording, transmission or reproduction of sound or images; magnetic, digital and optical data carriers and storage media; calculating machines, data processing equipment and computers; peripheral equipment for computers; programmed-data-carrying electronic circuits; recorded media; data cards; memory cards; smart cards; SIM cards; integrated circuit cards; telephone cards; encoded cards; computer hardware and firmware; computer programs; computer software; software to enable uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications networks; software to enable the playing of games on telecommunications apparatus; software to enable the playing of games over the Internet or other communications networks; software to be run on the Internet, on computer, on mobile phones or other electronic devices; software downloadable from the Internet; computer software for the redirection of messages; Internet e-mail, and/or other data to one or more electronic handheld devices from a data store on or associated with a personal computer or a server; computer software for the synchronization of data between a remote station or device and a fixed or remote station or device; fonts, typefaces, type designs and symbols in the form of recorded data; SD-Cards; compact discs; digital music; digital versatile discs; MP3 players; tablet computers, PDA's (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers, electronic organizers, electronic notepads; subscriber identity module cards whether for use in telecommunications apparatus or otherwise; telecommunications apparatus and equipment; mobile telecommunication apparatus and equipment; telecommunications systems and installations; telecommunications network apparatus; wireless and non-wireless routers; femtocells; drivers software for telecommunications networks and for telecommunications apparatus; telephones, mobile telephones and telephone handsets; mobile digital electronic devices; global positioning system (GPS) devices; adapters for use with telephones; batteries; battery chargers for use with telephones; mobile phone accessories; bags and cases specially adapted for holding or carrying portable telephones and telephone equipment and accessories; cameras; image processing apparatus; instruments and equipment; electronic publications (downloadable); mouse mats; parts and fittings for all the aforesaid goods.</p>

Class	Applicant's Services
35	<p>Retail services and on-line retail services connected with the sale of, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic, digital and optical data carriers and storage media, recording discs, calculating machines, data processing equipment and computers, peripheral equipment for computers, programmed-data-carrying electronic circuits, recorded media, data cards, memory cards, smart cards, SIM cards, integrated circuit cards, telephone cards, encoded cards, computer hardware and firmware, computer programs, computer software, software to enable uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications networks, software to enable the playing of games on telecommunications apparatus, software to enable the playing of games over the Internet or other communications networks, software to be run on the Internet, on computer, on mobile phones or other electronic devices, software downloadable from the Internet, computer software for the redirection of messages, Internet e-mail, and/or other data to one or more electronic handheld devices from a data store on or associated with a personal computer or a server, computer software for the synchronization of data between a remote station or device and a fixed or remote station or device, fonts, typefaces, type designs and symbols in the form of recorded data, SD-Cards, digital music, MP3 players, tablet computers, PDA's (Personal Digital Assistants), pocket PCs, mobile telephones, laptop computers, electronic organizers, electronic notepads, subscriber identity module cards whether for use in telecommunications apparatus or otherwise, telecommunications apparatus and equipment, mobile telecommunication apparatus and equipment, telecommunications systems and installations, telecommunications network apparatus, wireless and non-wireless routers, femtocells, drivers software for telecommunications networks and for telecommunications apparatus, telephones, mobile telephones and telephone handsets, mobile digital electronic devices, global positioning system (GPS) devices, adapters for use with telephones, batteries, battery chargers for use with telephones, mobile phone accessories, bags and cases specially adapted for holding or carrying portable telephones and telephone equipment and accessories, computer games equipment adapted for use with an external display screen or monitor, cameras, image processing apparatus, instruments and equipment, electronic publications (downloadable), mouse mats, parts and fittings for all the aforesaid goods, information and advisory services relating to the aforesaid services provided on line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunications network.</p>

Class	Applicant's Services
37	Installation, maintenance and repair of telecommunications installations, communications networks, computer networks and data networks; installation, maintenance and repair of telecommunications apparatus and equipment; information and advisory services relating to the aforesaid services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services in relation to the aforesaid services provided over a telecommunications network.

Class	Applicant's Services
38	<p>Telecommunications; telecommunications services; communications services; mobile telecommunications services; mobile telecommunications network services; fixed line telecommunication services; chat room services; portal services; electronic mail services; electronic message delivery services; transmission, delivery and reception of sound, data, images, music and information; directory enquiry services; providing user access to the Internet (service providers); broadcasting and delivery of multimedia content over electronic communications networks; broadcasting services, namely uploading, posting, showing, displaying, tagging, blogging, sharing or otherwise providing electronic media or information over the Internet or other communications networks; providing user access to software to enable the playing of games over the telecommunications apparatus; providing user access to software to enable the playing of games over the Internet or other telecommunications networks; providing user access to software to be run on the Internet, on computer, on mobile phones or other electronic devices; telecommunication of information (including web pages), computer programs and any other data; providing telecommunications connections or links to the Internet or databases; provision of broadband telecommunications access; broadband services; Internet access services; email and text messaging services; information services provided by means of telecommunication networks relating to telecommunications; services of a network provider namely rental and handling of access time to data networks and databases, in particular the Internet; communications services for accessing a database; leasing of access time to a computer database, providing access to computer databases, rental of access time to a computer database; operation of a network, being telecommunication services; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services in relation to the aforesaid services provided over a telecommunications network; providing wireless telecommunications via electronic communications networks; wireless digital messaging, paging services, and electronic mail services, including services that enable a user to send and/or receive messages through a wireless data network; providing access to digital music websites; delivery of digital music by telecommunications; telecommunications access services; communication services, namely, matching users for the transfer of music, video and audio recordings via communication networks; providing on-line bulletin boards for the transmission of messages among computer users concerning entertainment, music, concerts, videos, radio, television, film, news, sports, games and cultural events; rental and hire of communication apparatus and electronic mail-boxes; electronic transmission of news; radio and television broadcasting and transmission services; hire, leasing or rental of apparatus, instruments, installations or components for use in the provision of the aforementioned services; information, advice and consultancy services relating to all of the aforementioned; leasing of access time to a computer database.</p>

Class	Applicant's Services
41	Interactive entertainment services; electronic games services provided by means of any communications network; entertainment services provided by means of telecommunication networks; information services relating to education, training, entertainment, sporting and cultural activities provided by means of telecommunication networks; provision of news information; provision of entertainment by means of television and Internet protocol television; television provision services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services relating to the aforesaid services provided over a telecommunication network.

Class	Applicant's Goods & Services
42	<p>Design and development of computer hardware and software; computer services; computer services, namely, creating virtual communities for registered users to organize groups and events, participate in discussions, and engage in social, business and community networking; computer services, namely, hosting electronic facilities for others for organizing and conducting meetings, events and interactive discussions via communication networks; application service provider (ASP) services; namely, hosting computer software applications of others; application service provider (ASP) featuring software to enable or facilitate the uploading, downloading, streaming, posting, displaying, blogging, linking, sharing or otherwise providing electronic media or information over communication networks; providing temporary use of non-downloadable software applications for social networking, creating a virtual community, and transmission of audio, video, photographic images, text, graphics and data; computer services in the nature of customized web pages featuring user-defined or specified information, personal profiles, audio, video, photographic images, text, graphics and data; providing a web site featuring technology that enables online users to create personal profiles featuring social networking information and to transfer and share such information among multiple websites; computer programming services; installation, maintenance, updating, design and repair of computer software and computer programs; recovery of computer data; rental of computer, rental of computer software; rental of computer hardware; creating, operating and maintaining databases, Intranets and websites; hosting the web sites of others; information, advice and consultancy services relating to all of the aforementioned; conversion of data or documents from physical to electronic media; research in the field of telecommunication technology; monitoring of network systems in the field of telecommunications; technical support services; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services in relation to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services in relation to the aforesaid services provided over a telecommunications network.</p>

Annex 2





FULLY LOADED

The ultimate pay as you go package

A handset with £60 inclusive airtime credit

Nokia 2330



ovi NOKIA

Stay in touch

with mobile email

For more details visit: www.ovi.com/services

shebang

Fully Loaded™ Terms and Conditions

1. £60 top up credit delivered over first 6 months of connection at £10 per month.
2. Top up credit only valid with the phone (IMEI) provided as part of the Fully Loaded™ offer.
3. The first Fully Loaded™ top up is redeemable at point of first activation via www.shebang.co.uk or calling 0845 800 1234. You will need to provide the IMEI and mobile number.
4. Subsequent Fully Loaded™ top ups credits available from the same day of each redeemer month as credit changes network connection. You will receive a reminder text message each month when top up is available with a unique authentication code.
5. Authentication code and mobile number required for subsequent Fully Loaded™ top ups, redeemed via web.
6. Fully Loaded™ top up credit will be applied on verification of code, normally within the hour but may take up to 24 hours during busy periods.
7. Authentication codes must be redeemed within 28 days of issue. Code and time of code expiry will be included in the text.
8. Calls to 0845 numbers are charged at the local rate, call charges from mobiles or other networks may vary. When leaving Orange you will be on Orange Starter with a 20p per minute rate for calls and 10p for texts. When leaving Orange you will be on Orange Starter with a 20p per minute rate for calls and 10p for texts. Texts are charged at the local rate.
9. Fully Loaded™ top up credit is not available for use for calls and 10p for texts. Texts are charged at the local rate.

www.orange.co.uk



- Voice memo
- Bluetooth connectivity
- Stereo FM radio & recorder
- GPS internet connection
- VGA camera
- Ovi mail enabled



NOKIA 1208

FullyLoaded:-)

The ultimate pay as you go handset with £30 inclusive airtime credit.



Everything you need

FullyLoaded:-)



Fully Loaded Terms and Conditions

1 £30 top up credit delivered over first 6 months of connection at £5 per month.

2 Top up credit only valid with the phone (IMEI) provided as part of the 'Fully Loaded' offer.

3 The first 'Fully Loaded' top up is redeemable at point of first activation via www.wirelessreg.co.uk or calling 0845 880 1234. Consumer will need to provide their IMEI and mobile number.

4 Subsequent five 'Fully Loaded' top up credits available from the same day of each calendar month with an official Orange network connection. Consumer will receive a reminder text message each month when top up is available with a unique authorisation code (example SMS below).

5 Authorisation code and mobile number required for subsequent 'Fully Loaded' top ups, redeemed via web or call centre as above.

6 'Fully Loaded' top up credit will be applied on verification of code, normally within the hour but may take up to 24 hours during busy periods.

7 Authorisation codes must be redeemed within 28 days of issue. Date and time of code expiry will be included in the text alert.

Example SMS: "You are now eligible for your next Orange airtime top up. This will be top up 2 of £5. Please text www.wirelessreg.co.uk or call 0845 880 1234 to claim using the auth code at the end of this message. Your claim remains valid until midnight on 15.07.2009. Auth Code: *****16895756"

Where "x" is the auth code specific to this top up.

Calls to 0845 880 1234 are charged at the local rate, call charges from mobiles or other networks may vary. When joining Orange you will be on Orange Starter with a 20p per minute flat rate for calls and Top Up. Call 343 to register for one of the annual packages with rewards. For full terms and conditions visit www.orange.co.uk



22/10/2009 10:10 6009 1208



FULLY LOADED

The ultimate pay as you go package

A handset with £60 inclusive airtime credit

Nokia 1208



Vibrant 65,000 colour display



Fully Loaded™ Terms and Conditions

1. £60 top up credit delivered over 8 days @ 10p per month.
2. Top up credit only valid with the phone (not provided as part of the Fully Loaded™ offer.
3. The first Fully Loaded™ top up is redeemable at point of first activation via www.1000go.com or calling 0845 800 1234. You will need to provide the valid and mobile number.
4. Subsequent the Fully Loaded™ top up credits available from the same day of each calendar month as offered on the Orange network connect. You will receive a reminder text message each month when top up is available with a unique authentication code.
5. Authentication code and mobile number required for subsequent Fully Loaded™ top ups, redeemed via web.
6. Fully Loaded™ top up credit will be applied on verification of code, normally within the hour but may take up to 24 hours during busy periods.
7. Authentication codes must be redeemed within 28 days of issue. Date and time of code expiry will be included in the text alert.
8. Calls to 0845 numbers are charged at the local rate, call charges from mobiles or other networks may vary. When joining Orange you will see Orange Starter with a 25p per minute rate for calls and 10p for texts (not covered at time of print). Call 24x7 to register for one of the varied packages with rewards. For full Orange pay as you go Terms and Conditions visit www.orange.co.uk

Nokia 1208

- Flashlight
- Organiser
- Games
- SMS messaging
- Vibration
- Polychromatic regions

1208_001_FL_80x90x114mm.indd 1

Annex 3

Another UK 1st only from ...

The whole...
shebang

'Fully Loaded'

Biggest value pre-pay ever!



With £60 Top-up and a phone from £34.97 trade:

Get a massive 30% margin

Get to win customers with a 'free' pre-pay phone



£60
Top-up credit
+ Nokia 1208
Retail £49.95
Trade
£34.97

30%
TRADE MARGIN



£60
Top-up credit
+ Nokia 2330
Retail £69.95
Trade
£48.06

30%
TRADE MARGIN

ovi

Benefits for your customers:

More value than ever on pre-pay

£10 top-up credit per month for 6 months

Automated text alerts for monthly top-up

Customer automatically qualifies for Orange Rewards, e.g. on Dolphin 300 texts/month

Another innovation from Shebang, the distributor that creates more value for consumers, dealers and networks.

"Fully Loaded" was created from the belief that a pre-pay phone should come with real credit, you wouldn't give a toy without batteries or buy a bat without a ball. Now the consumer can give a gift and not a bill" **Iain Humphrey MD.**

See full Terms and Conditions on the next page.

NOKIA



Sales 01327 709222

Another UK 1st only from ...

The whole...
shebang

'FullyLoaded'



Biggest value pre-pay ever!

Terms and Conditions

- 1 £60 top up credit delivered over first 6 months of connection at £10 per month.
- 2 Top up credit only valid with the phone (IMEI) provided as part of the 'Fully Loaded' offer.
- 3 The first 'Fully Loaded' top up is redeemable at point of first activation via www.simregister.co.uk or calling 0845 880 1234. Consumer will need to provide their IMEI and mobile number.
- 4 Subsequent five 'Fully Loaded' top up credits available from the same day of each calendar month as official Orange network connection. Consumer will receive a reminder text message each month when top up is available with a unique authorisation code (example SMS below).
- 5 Authorisation code and mobile number required for subsequent 'Fully Loaded' top ups, redeemed via web or call centre as above.
- 6 'Fully Loaded' top up credit will be applied on verification of code, normally within the hour but may take up to 24 hours during busy periods.
- 7 Authorisation codes must be redeemed within 28 days of issue. Date and time of code expiry will be included in the text alert.

Example SMS: 'You are now eligible for your next Orange airtime top up. This will be top up *2 of 6. Please visit www.simregister.co.uk or call 0845 880 1234 to claim using the auth code at the end of this message. Your claim remains valid until midnight of **15.07.2009. Auth Code: ***16895756.'

Where * is top up field number and total top ups for this customer

Where ** is next top up date -1

Where *** is the auth code specific to this top up



Sales 01327 709222

2



The ultimate in pay as you go packages

Handsets with £60 inclusive airtime credit



Another exclusive from the distributor that creates more value for consumers, trade partners and networks.

New



Nokia 2330
£48.06 trade
 £69.95 RRP (30% margin)



More value than ever before on pay as you go

Out now



Samsung E1120
£34.97 trade
 £49.95 RRP (30% margin)



New



LandRover S1
£200.50 trade
 £279.95 RRP (30% margin)



Out soon



Nokia 1208/09
£34.97 trade
 £49.95 RRP (30% margin)



Additional customer benefits:

- £10 top-up credit per month for 6 months
- Automated text alerts for monthly top-up



Terms and conditions apply and are available upon request.

Call Sales
0844 846 8228

Fully Loaded :-)

The UK's biggest value pre-pay package ever!

another UK first
exclusively from Shebang



£60
airtime
credit

both for a
super-low
price of

only
£34.97
trade
£49.95 retail

That's
less than
the credit
alone!

and an
amazing

30%
trade margin

Benefits for your customers:

- More value than ever on pre-pay
- £10 top-up credit per month for 6 months
- Automated text alerts for monthly top-up
- Customer automatically qualifies for Orange Rewards, e.g. on Dolphin 300 texts/month
- One for a friend! bonus Orange SIM with £5 airtime credit inside the box.

FREE
Samsung
E1120

and



Sales team

01327 709222

Another innovation from Shebang, the distributor that
creates more value for consumers, dealers and networks.

Fully Loaded :-)